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ABSTRACT

This paper presented as part of a symposium on Issues in the Design and Implementation of Computer-Based Student Information Systems focuses on the ethical and legal aspects of these systems. It provides an update of the Buckley Amendment or Family Educational Rights and Privacy Act of 1974 (FERPA) and a reminder of related codes of ethics. Four suggested goals for a student information system are suggested: (1) that the record system only contain information about individuals that is pertinent and necessary: (2) that the information it does contain is correct: (3) that the information it contains will be kept private unless its release has been authorized: and (4) that the individuals concerned, other students, the school, and/or society will benefit from the data. Examples of procedures--most are related to medical student information systems--are presented as a way of attaining these goals. A bibliography of 12 citations is included. (RAA)

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ETHICAL AND LEGAL ASPECTS

of

COMPUTER-BASED STUDENT INFORMATION SYSTEMS

by

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My assignment in this symposium is to address the Ethical and Legal Aspects of Computer-Based Student Information Systems, particularly from the vantage point of someone working at a national educational association located in our country's capital. This presentation will consist of an update on the Buckley Amendment, a reminder of related codes of ethics, a summary of suggested ethical goals for a student information system, and examples of procedures that may be helpful in achieving these goals.

Buckley Amendment

The major federal legislation dealing with student records is the Family Educational Rights and Privacy Act of 1974 (1). This act is referred to both by its acronym of FERPA and as the "Buckley Amendment", after its sponsor, Senator James F. Buckley of New York.

FERPA (or the Buckley Amendment) was originally intended to apply primarily to elementary and secondary schools and to protect students from being asked inappropriate questions and from having inappropriate educational decisions made about them on the basis of their records. (It was also intended to prevent disclosure of sensitive information about these students to third parties.) At the last minute, however, and without any advance warning or discussion, the act was extended to post-secondary institutions. This created quite a furor among educational associations in Washington, D.C. and among their constituent institutions.

The early concern of AERA, for example, is illustrated by an article in the February 1975 issue of the Educational Researcher entitled "The Buckley Regulations: Rights and Restraints" (2). In the concluding section of this critique, the author stated:

> "While no one in the educational research field would quarrel with the need to protect rights of confidentiality (or safety) in this age of computerized record-keeping practices, this trend is, in effect, establishing a federally mandated code of ethics for the research field. Why should a statute intended to protect individual rights impede the professional work of one who is making no judgment about individual subjects and whose goal is the improvement of the educational process?"

By way of review, the Buckley Amendment requires all educational institutions that receive funds from the U.S. Office of Education to protect the privacy rights of their students in at least six major ways:

1) By informing students annually of their rights under FERPA;

2) By maintaining an all-inclusive list of the types and locations of student education records;

3) By permitting students to inspect and review their own educational records;

4) By providing students with an opportunity to seek amendment or correction of these records;

5) By maintaining records of requests for disclosure of personally identifiable information and permitting students to review these request records; and

6) By preventing the disclosure of any personally identifiable information from a student's education records without the student's prior written consent unless specifically permitted by the FERPA law.

Fortunately, the law does permit access to student records by other officials (including researchers) at the student's own institution as long as they have been determined by that institution to have "legitimate educational interests". The law also permits access to student records by outside researchers if their studies protect the personal identity of the student and if the study information is destroyed when no longer needed for the purpose for which it was gathered.

Following the publication of the FERPA Final Regulations in the Federal Register of June 17, 1976, there was a series of articles in the Educational Researcher about its probable effect on educational research (3,4,5,6,7). At one extreme, a summer 1976 editorial said that federal officials had been "gratifyingly sensitive to the needs of educational research" and concluded that "the Buckley Act regulations provide laudable demonstration that personal rights and research can be compatibly forwarded by cooperative collaboration of federal and professional bodies" (3). On the other hand, several articles expressed serious concerns about the potential negative effects of federal restrictions on educational research (4,5,6,7).

Privacy Protection Study Commission

A significant subsequent development related to the Buckley Amendment is the voluminous report of the Privacy Protection Study Commission that was submitted to President Carter in July of 1977 (7,8). This report recommended a number of changes in FERPA, including its expansion to cover: (a) the records of rejected applicants; and (b) the activities of such national testing and data-assembly organizations as the AAMC and the Educational Testing Service.

(Under the Buckley Amendment, the records of applicants are covered only if they enroll as students and the records and activities of testing and data-assembly services are not officially covered at all.)

The FERPA-related recommendations of the Privacy Commission were introduced in Congress as proposed legislation during January of 1979 (9). Recent checks with Congressional staff and with staff of the FERPA office, however, reveal that there has been no serious consideration of the proposed further amendments and that there is little likelihood of FERPA being modified in the near future.

It is also noteworthy that one feared aspect of the Buckley Amendment has never been formally carried out. Although the Act called for the eventual development of supplementary regulations specifically aimed at research activities, these have never been produced. Apparently, this is so because: (a) there have been few, if any, complaints to FERPA about educational research; and (b) other privacy legislation and professional codes of ethics have made such regulations unnecessary.

Codes of Ethics

Among the codes of ethics of most pertinence to educational research are those developed by the American Psychological Association (10,11). Their "Ethical Standards" have been in existence since the early 1950's and include both principles of "confidentiality" and of "research precautions" (10). Similarly, their "Ethical Principles in the Conduct of Research with Human Participants" was published in 1973 (prior to the Buckley Amendment), and provides over 100 pages of detailed advice about research ethics (11). Specific mention is made by APA of the potential loss of confidentiality through the use of automated data banks and the researcher is advised to maintain confidentiality both by controlling his own data against access by others and by withholding his data from other people's information systems unless assured that adequate safeguards exist to protect the confidentiality of the information and the anonymity of the individual.

With these codes of ethics and the Buckley Amendment as background, I will now turn to some specific ethical goals of a student information system and to a few examples of practical procedures for meeting these goals (See Table 1).

Ethical Goals

To translate the ethical goals of a computer-based student information system to a practical level, I believe it is helpful to ask ourselves what would we want to find in a system containing our own records as students. Regardless of whether the Buckley Amendment or the Codes of Ethics were in effect, I believe we would seek in any such system at least four ethical goals:

1) That the record system only contain information about us that is pertinent and necessary;

2) That the information it does contain about us is correct;

3) That the information it contains will be kept private unless we have authorized its release; and

4) That we, other students, our school and/or society will benefit from the data.

Suggested Procedures

To meet these goals, a number of different procedures are possible and some have already been mentioned by the previous speakers. I will add a few examples from my own experience at the national level and will try to relate them to the institutuional level as well.

Relative to goal number one (that the system only contain information about us that is pertinent and necessary), I believe the most important procedure is to have a broadly representative group determine what can (and cannot) be ethically included in a student information system. At the AAMC, for example, we use advisory committees of deans, student affairs officers, preprofessional advisors, financial aid officers, minority affairs officers, and medical students to guide us in such matters. In addition, we have a fairly elaborate clearance procedure for any new data-gathering instrument. This procedure requires the approval of six key administrators. At the institutional level, I would strongly recommend that there be similar clearance procedures and advisory groups and that these groups definitely include student representation.

Turning to goal number two (that the information about us in the system is correct), I believe the key underlying principle is to give students the opportunity to verify this information when appropriate. At the AAMC, for example, we routinely send to all applicants using AMCAS (our centralized application service) a record of all the information about them that we transmit to their designated medical schools. We also inform medical students that all personally identifiable data submitted by an applicant through either AMCAS or the New MCAT is available to them at their request. A parallel example at the institutional level is the growing practice of medical school student affairs officers of letting their students see drafts of their recommendations for residency training. Since these letters of recommendation are usually a composite of the student's admissions, academic and extra-curricular records, this procedure can provide a highly-motivated opportunity for students to check on both the accuracy of their records and on their interpretation.

Regarding goal number three (that the information about us be kept private unless its release has been authorized), I believe that the guiding principle is to anticipate and obtain such release in advance by explaining to the student the need for its release and the safeguards for its confidentiality. At the AAMC, this is ordinarily handled by means of an extended explanation plus a comprehensive release statement specifying that personal information will only be divulged in aggregate form unless otherwise specified. In the case of our Graduation Questionnaire, for example, it is explained that the student's name is needed so we can link his questionnaire responses to the other information already available about him or her in our MCAT and AMCAS data bases. Although we guarantee that the questionnaire data will be used by the AAMC in aggregate form only, the release specifies that both aggregated and personally identifiable information may be sent to the student's own school. It is promised, however, that the personally identifiable information will not be sent until after the student has graduated.

A parallel at the professional school level might be a request for annual indications of career plans that would eventually be linked with the student's admissions records. The need for such linkage should be explained and the students might be asked to release this information to members of the Admissions Committee as well as to the research staff. It might further be specified that this information would only be shared with the Admissions Committee in aggregate form until after the student's graduation from professional school.

Finally, relative to achieving goal number four (that we or others benefit from the data about us in the student information system), I believe the basic principle is that of optimum feedback of the results of our research. At the AAMC, for example, we routinely produce studies of applicants, enrollees and graduates that are reported in the literature and in some cases are reported by customized computer printouts to the medical school deans. In addition, we are making increased efforts to provide feedback data directly to the students. For example, we provided all 1980 graduates participating in the National Resident Matching Program with a five-page report of key data from the 1979 Graduation Questionnaire Survey. At the institutional level, some schools are sharing with their students and faculty the local and national results of our survey of graduates, including a summary of their students' perceptions of their school's strengths and weaknesses. In addition, I would encourage all professional schools to share the results of their own educational research with their students as well as with their faculty and administrative officers.

Sources of Further Information

Those interested in further details on the Ethical and Legal Aspects of Student Information Systems are referred to the Reference section of this presentation. The only reference not already cited is the model student records policies and procedures (12) which is available on request from the FERPA office.

Conclusion

In conclusion, my preparation for this presentation leads me to believe that most institutions of higher education are doing a reasonably good job of meeting the legal requirements of computer-based student information systems and that there is little likelihood that the Buckley Amendment will be changed in the near future. I have also gathered the impression that, contrary to some early fears, the Buckley Amendment has not proved to be a significant barrier to the conduct of good educational research or to the effective use of computer-based student information systems. This is undoubtedly due in part to the consistency of FERPA with previously existing professional codes of ethics.

However, regardless of the law or of ethical codes, I believe that if we put ourselves in the shoes of our students, we will want to do all we can to achieve the four goals discussed above of: (a) gathering only pertinent and necessary information; (b) insuring that the information is correct; (c) safeguarding its privacy; and (d) putting it to a useful purpose. By keeping these four ethical goals in mind and by establishing effective procedures to implement them, we should be even better able to achieve student information systems that will meet the joint needs of our institutions, of our students and of ourselves as researchers.

Summary

This paper was presented on April 10, 1980 as part of a Symposium on "Issues in the Design and Implementation of Computer-Based Student Information Systems". Focusing on the ethical and legal aspects of these systems, the paper provides an update on the Buckley Amendment, a reminder of related codes of ethics, a summary of four suggested goals for a student information system, and examples of procedures that may be helpful in achieving these goals. Most of the examples relate to medical student information systems.

References

1. A Guide to Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act (FERPA) of 1974 as Amended. Prepared in 1976 by the "Buckley Amendment" Task Force of the American Association of Collegiate Registrars and Admissions Officers (AACRAO). (This 52-page publication may be purchased for $4.00 from the AACRAO office located at One Dupont Circle, N.W., Suite 300, Washington, D.C. 20036.)

2. Davis, C.A. The Buckley Regulations: Rights and Restraints. Educational Researcher, 4:11-13, 1975 (February).

3. Schutz, R.E. Progressive Regulations for Educational R&D and Student Privacy Rights. (Editorial) Educational Researcher, 5:1, 1976. (July-August).

4. Weinberger, J.A. and Michael, J.A. Federal Restrictions on Educational Research: A Status Report on the Buckley Amendment and the Freedom of Information Act. Educational Researcher, 5:3-8, 1976 (December).

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7. Michael, J.A. and Weinberger, J.A. Federal Restrictions on Educational Research: Privacy Protection Study Commission Hearings. Educational Researcher, 6:15-18, 1977 (April).

8. Personal Privacy in an Information Society (The Report of the Privacy Protection Study Commission) July, 1977. (This 654-page report may be purchased for $5.00 from the U.S. Government Printing Office, Washington, D.C. 20402. Its stock number is 052-003-00395-2.)

9. H.R. 347 To amend the Family Educational Rights and Privacy Act (20 U.S.C. 1232) to provide for the protection of the privacy of personal information, and for other purposes. Introduced in the U.S. House of Representatives on January 15, 1979 by Congressman Barry W. Goldwater, Jr. of California and referred to the Committee on Education and Labor.

10. American Psychological Association. Ethical Standards of Psychologists (1979 Revision). Washington, D.C., 1979. (This 8-page pamphlet is available on request from the APA office located at 1200 Seventeenth Street, N.W., Washington, D.C. 20036.)

11. American Psychological Association. Ethical Principles in the Conduct of Research on Human Participants. Washington, D.C., 1973. (This 104-page booklet is available for $4.00 from the APA.)

12. Student Records Policies and Procedures for State University (A model which colleges and universities may use as one example of a student records policy to meet the standards of the Family Educational Rights and Privacy Act of 1974.) This 23-page mimeographed report is available upon request from:

The Family Educational Rights and
Privacy Act Office
Department of Health, Education and Welfare
The Hubert Humphrey Building, Room 526F
Washington, D.C. 20201

The phone number is (202) 245-6511

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Table 1

Ethical Goals for a Student Information System
and Suggested Procedures for Achieving Them

Ethical Goals	Suggested Procedures
1. Appropriate Input	Advisory Group Clearance Process Student Participation
2. Correct Data	Verification by Students Notification of Rights of Access
3. Protected Output	Informed Release Aggregation of Data
4. Social Utility	Feedback of Results to Students as well as to Faculty and Administrators.